Q–36: Under the sequencing rules applicable to section 422 qualified stock options, an option was permitted to be exercised out of sequence so long as it was issued at a higher price than prior outstanding options (section 422(c)(6)). Will a similar exception to the sequencing restriction be applicable to ISO's?

A–36: No. Section 422A does not contain such an exception to the sequencing restriction.

Q–37: How does the section 422A sequential exercise restriction (see A–2(c)(7)) apply to an ISO granted in one year that, by its terms, can only be exercised in installments over a period of years?

A–37: Such an installment ISO is the grant of a single option. The section 422A sequential exercise restriction would restrict the exercise of any later-granted ISO until either the exercise or expiration of all installments of this earlier-granted ISO.

Q–38: Assume that an option granted and exercised during January of 1982 automatically qualifies, by its terms, for ISO treatment. During February of 1982, the same employee exercised a second option, one that had been granted during 1978. Prior to the exercise of the 1978 option, it was amended under the transitional rules (see A–3) so that it would conform to the section 422A qualification requirements (see A–2(c)). If the 1978 option is properly elected to receive ISO treatment (see A–4), will such an election adversely affect the 1982 option's status as an ISO?

A–38: Yes. The election of the 1978 option to receive ISO treatment will automatically disqualify the 1982 option. If the 1982 option is to qualify as an ISO, it cannot be exercised prior to the exercise or expiration of all ISO's previously granted and outstanding on the 1982 option's date of grant (see A–2(c)(7)). When the 1982 option was granted during January of 1982, the 1978 option was already granted and outstanding for purposes of the section 422A sequential exercise restriction.

RECEIPT OF PROPERTY OR CASH UPON EXERCISE OF AN ISO

Q–39: Section 422A provides that ISO treatment will be available even though the employee has the right to receive cash or other property at the time of the exercise of the option, so long as such property is subject to inclusion in income under section 83 (see A–2(d)(3)). To what extent does section 422A permit the use of tandem options and stock appreciation rights (SARs) in connection with ISO's?

A–39: A tandem stock option, wherein two options are issued together and the exercise of one affects the right to exercise the other, is not permitted because such a tandem option arrangement may be used to evade the section 422A qualification requirements (see A–2(c)).

A tandem ISO–SAR, wherein an ISO and an SAR are granted together and the exercise of one affects the right to exercise the other, is permitted so long as the SAR, by its terms, meets the following requirements:

(a) The SAR will expire no later than the expiration of the underlying ISO.

(b) The SAR may be for no more than 100% of the spread, *i.e.*, the difference between the exercise price of the underlying option and the market price of the stock subject to the underlying option at the time the SAR is exercised.

(c) The SAR is transferable only when the underlying ISO is transferable, and under the same conditions.

(d) The SAR may be exercised only when the underlying ISO is eligible to be exercised.

(e) The SAR may be exercised only when there is a positive spread, *i.e.*, when the market price of the stock subject to the option exceeds the exercise price of the option.

If all of the above requirements are met, for purposes of the 422A sequential exercise restriction (see A–2(c)(7)), a tandem ISO–SAR will be considered exercised in full when either the underlying ISO or the SAR is exercised. Additionally, SAR's may be paid in either cash or property, or a combination thereof, so long as the section 83 income inclusion rule applies to any property so transferred.

[T.D. 7799, 46 FR 61840, Dec. 21, 1981, as amended by T.D. 8435, 57 FR 43896, Sept. 23, 1992]

PART 15—TEMPORARY INCOME TAX REGULATIONS RELATING TO EXPLORATION EXPENDITURES IN THE CASE OF MINING

Sec.

AUTHORITY: Sec. 7805, 68A Stat. 917; 26 U.S.C. 7805.

SOURCE: T.D. 6907, 31 FR 16776, Dec. 31, 1966, unless otherwise noted.

§ 15.0–1 Scope of regulations in this part.

The regulations in this part relate to expenditures of the type described in section 615(a) or in section 617(a)(1) paid or incurred after September 12, 1966. The regulations in this part do not apply to the income tax treatment of mining exploration expenditures paid or incurred before September 13, 1966, and no election made pursuant to the provisions of the regulations in

this part shall have any effect on the income tax treatment of exploration expenditures paid or incurred before such date. See §15.1–4 for rules relating to treatment of exploration expenditures paid or incurred during taxable years beginning before September 13, 1966, and ending after September 12, 1966.

§15.1–1 Elections to deduct.

(a) *Manner of making election*—(1) *Election to deduct under section 617(a).* The election to deduct exploration expenditures as expenses under section 617(a) may be made by deducting such expenditures in the taxpayer's income tax return for the first taxable year ending after September 12, 1966, for which the taxpayer desires to deduct exploration expenditures which are paid or incurred by him during such taxable year and after September 12, 1966. This election may be exercised by deducting such expenditures either in the taxpayer's return for such taxable year or in an amended return filed before the expiration of the period for filing a claim for credit or refund of income tax for such taxable year. Where the election is made in an amended return for a taxable year prior to the most recent year for which the taxpayer has filed a return, the taxpayer shall file amended income tax returns, reflecting any increase or decrease in tax attributable to the election, for all taxable years affected by the election. See section 617(a)(2)(C) for provisions relating to the tolling of the statute of limitations for the assessment of any deficiency for any taxable year, to the extent the deficiency is attributable to an election under section 617(a). In applying the election to the years affected there shall be taken into account the effect that any adjustments resulting from the election shall have on other items affected thereby, such as the deduction for charitable contributions, the foreign tax credit, net operating loss and other deductions or credits the amount of which is limited by the taxpayer's taxable income, and the effect that adjustments of any such items have on other taxable years. Amended returns filed for taxable years subsequent to the taxable year for which the election under section 617(a) is made by amended return shall apply the recapture provisions of subsections (b)(1)(B), (c), and (d) of section 617.

(2) *Election to deduct under section 615*—(i) *General rule.* The election to deduct exploration expenditures under section 615 shall be made in a statement filed with the district director, or director of the regional service center, with whom the taxpayer's income tax return is required to be filed. If the election is made within the time period prescribed for filing an income tax return (including extensions thereof) for the first taxable year ending after September 12, 1966, during which the taxpayer pays or incurs expenditures which are within the scope of section 615 and which are paid or incurred by him after September 12, 1966, this statement shall be attached to the taxpayer's income tax return for such taxable year. If the election is made after the time prescribed for filing such return but before the expiration of the period (described in paragraph (d)(1) of this section) for making the election under section 615(e), the statement must be signed by the taxpayer or his authorized representative. The statement shall be filed even though the taxpayer charges to capital account all such expenditures paid or incurred by him during such taxable year after such date. The statement shall clearly indicate that the taxpayer elects to have section 615 apply to all amounts deducted by him with respect to mining exploration expenditures paid or incurred after September 12, 1966. If the taxpayer desires, he may file this statement by attaching it to his return for a taxable year prior to the first taxable year ending after September 12, 1966, in which he pays or incurs mining exploration expenditures. Except as provided, in subdivision (ii) of this subparagraph, if the taxpayer does not file such a statement within the period prescribed by section 615(e) and paragraph (d)(1) of this section, any amounts deducted by him with respect to exploration expenditures paid or incurred by him after September 12, 1966, will be deemed to have been deducted pursuant to an election under section 617(a).

(ii) *Exception.* The last sentence of subdivision (i) of this subparagraph

shall not apply if all mining exploration expenditures which are paid or incurred by the taxpayer after September 12, 1966, and which are deducted by him in his income tax return for the first taxable year ending after September 12, 1966, during which he pays or incurs such expenditures are outside the scope of section 617(a). For example, assume that, in his return for his first taxable year ending after September 12, 1966, a taxpayer deducts mining exploration expenditures paid or incurred after September 12, 1966, and does not attach to his return the statement described in subdivision (i) of this subparagraph. However, all of the exploration expenditures paid or incurred by the taxpayer after September 12, 1966, and before the end of the taxable year were paid or incurred with respect to minerals located neither in the United States nor on the Outer Continental Shelf. The taxpayer will be deemed to have made an election under section 615(e) by deducting all or part of those expenditures as expenses in his income tax return.

(b) *Information to be furnished.* A taxpayer who makes or has made an election under either section 615(e) or section 617(a) to deduct expenditures paid or incurred after September 12, 1966, shall indicate clearly on his income tax return for each taxable year for which he deducts any such expenditures the amount of the deduction claimed under section 615 (a) or (b) or section 617(a) with respect to each property or area of interest. Such property or area of interest shall be identified by a description sufficiently adequate to permit application of the recapture rules of section 617 (b), (c), and (d) and the rules of section 615(g) (relating to effect of transfer of mineral property).

(c) *Effect of election.* A taxpayer who has made an election under section 615(e) may never make an election under section 617(a) unless, within the period set forth in section 615(e) and paragraph (b)(1) of §15.1–2, he revokes his election under section 615(e). A taxpayer who has made an election under section 617(a) may never make an election under section 615(e) unless, within the period set forth in section 615(e) and paragraph (b)(1) of §15.1–2, he revokes his election under section 617(a). A taxpayer who has made, and has not revoked, an election under section 617(a) may not, in his return for the taxable year for which the election is made or for any subsequent taxable year, charge to capital account any expenditures which are within the scope of section 617(a), and he must deduct all such expenditures as expenses. Except as provided in paragraph (a)(2) of §1.615–2 of this chapter (Income Tax Regulations), a taxpayer who makes an election under 615(e) may not change his treatment of exploration expenditures deducted, deferred, or capitalized pursuant to such election unless he revokes the election made under section 615(e).

(d) *Time for making election*—(1) *Election under section 615(e).* A taxpayer may not make an election under section 615(e) after the expiration of the 3-year period beginning with the date prescribed by section 6072 or other provision of law for filing the taxpayer's income tax return for the first taxable year ending after September 12, 1966, in which the taxpayer pays or incurs expenditures to which section 615(a) would apply if an election were made under section 615(e). This 3-year period shall be determined without regard to any extension of time for filing the taxpayer's income tax return. An election under section 615(e) may not be made after the expiration of the 3-year period even though the taxpayer charged to capital account, or erroneously deducted as development expenditures under section 616, all mine exploration expenditures paid or incurred by him after September 12, 1966, and before the end of his first taxable year ending after September 12, 1966, in which he paid or incurred such expenditures.

(2) *Election under section 617(a).* The election under section 617(a) may be made at any time before the expiration of the period prescribed for filing a claim for credit or refund of the tax imposed by chapter 1 for the first taxable year for which the taxpayer desires to deduct exploration expenditures under section 617.

(3) *Timely mailing treated as timely filing.* Section 7502 (relating to timely mailing treated as timely filing) shall apply in determining the date when an

election under either section 615(e) or section 617(a) is made.

§15.1–2 Revocation of election to deduct.

(a) *Manner of revoking election.* A taxpayer may revoke an election made by him under section 615(e) or section 617(a) by filing with the internal revenue officer with whom the taxpayer's income tax return is required to be filed, within the periods set forth in paragraph (b) of this section, a statement, signed by the taxpayer or his authorized representative, which sets forth that the taxpayer is revoking the election previously made by him with respect to the deduction of mining exploration expenditures paid or incurred after September 12, 1966, and states with whom the document making the election was filed. A taxpayer revoking such an election shall file amended income tax returns, reflecting any increase or decrease in tax attributable to the revocation of election, for all taxable years affected by the revocation of election. See section 617(a)(2)(C) for provisions relating to the tolling of the statute of limitations for the assessment of any deficiency for any taxable year, to the extent the deficiency is attributable to an election or revocation of election under section 617(a). In applying the revocation of an election to the years affected there shall be taken into account the effect that any adjustments resulting from the revocation of election shall have on other items affected thereby, such as the deduction for charitable contributions, the foreign tax credit, net operating loss, and other deductions or credits the amount of which is limited by the taxpayer's taxable income, and the effect that adjustments of any such items have on other taxable years.

(b) *Time for revoking election*—(1) *Election under section 615(e).* An election under section 615(e) may be revoked at any time before the expiration of the 3-year period described in paragraph (d)(1) of §15.1–1. Such an election may not be revoked after the expiration of the 3-year period.

(2) *Election under section 617(a).* An election under section 617(a) may be revoked before the expiration of the last day of the third month following the month in which the final regulations issued under the authority of section 617 are published in the FEDERAL REGISTER. After the expiration of this period, a taxpayer who has made an election under section 617(a) may not revoke that election unless he obtains the consent of the Secretary or his delegate in the manner to be set forth in the final regulations under section 617.

(c) *Additional information to be furnished by a transferor of mineral property.* If, before revoking his election, the taxpayer has transferred any mineral property with respect to which he deducted exploration expenditures paid or incurred after September 12, 1966, to another person in a transaction as a result of which the basis of such property in the hands of the transferee is determined by reference to the basis in the hands of the transferor, the statement submitted pursuant to paragraph (a) of this section shall state that such property has been so transferred and shall identify the transferee, the property transferred, and the date of the transfer.

§15.1–3 Elections as to method of recapture.

(a) *In general.* If the taxpayer so elects with respect to all mines with respect to which deductions have been allowed under section 617(a) and which reach the producing stage during a taxable year, he shall include in gross income for the taxable year an amount equal to the adjusted exploration expenditures with respect to such mines (determined under section 617(f)(1)). The amount so included in income shall be treated for purposes of Subtitle A of the Internal Revenue Code as expenditures which are paid or incurred on the respective dates on which the mines reach the producing stage and which are properly chargeable to capital account. If the taxpayer does not make this election for a taxable year during which any mine with respect to which deductions have been allowed under section 617(a) reaches the producing stage, the deduction for depletion under section 611 with respect to the property (whether determined under §1.611–2 of this chapter (Income Tax Regulations) or under section 613) shall be disallowed until the amount of

depletion which would be allowable but for section 617(b)(1)(B) equals the amount of the adjusted exploration expenditures with respect to the mine. The fact that a taxpayer does not make the election described in the first sentence of this paragraph for a taxable year during which mines with respect to which deductions have been allowed under section 617(a) reach the producing stage shall not preclude the taxpayer from making the election with respect to other mines which reach the producing stage during a subsequent taxable year. However, an election may not be made for any taxable year with respect to any mines which reached the producing stage during a preceding taxable year.

(b) *Manner of making elections.* A taxpayer will be considered to have made an election in accordance with the manner in which the adjusted exploration expenditures with respect to the mines reaching the producing stage during a taxable year are treated in his return for such taxable year.

(c) *Time for making election.* The election described in paragraph (a) of this section may be made, or changed by filing an amended return, not later than the time prescribed by law for filing the return (including extensions thereof) for the taxable year.

§ 15.1–4 Special rules.

(a) *Taxable years beginning before September 13, 1966, and ending after September 12, 1966*—(1) *General rule.* An election made under section 615(e) or section 617(a) applies only to expenditures paid or incurred after September 12, 1966. The income tax treatment of exploration expenditures paid or incurred before September 13, 1966, will be determined in accordance with the provisions of section 615 prior to its amendment by the Act of September 12, 1966 (Pub. L. 89–570, 80 Stat. 759). If a taxpayer makes an election under section 615(e) in his income tax return for a taxable year beginning before September 13, 1966, and ending after September 12, 1966, amounts deducted under section 615 with respect to expenditures paid or incurred during such taxable year but before September 13, 1966, will be taken into account in determining whether the $100,000 limitation set forth in section 615(a) is reached during 1966. Similarly, a taxpayer making an election under section 615(e) shall take into account expenditures deducted under section 615 for periods prior to September 13, 1966, in determining when the $400,000 overall limitation set forth in section 615(c) is reached. The fact that a taxpayer deducts under section 615 expenditures paid or incurred prior to September 13, 1966, shall not affect his right to make an election under section 617(a) to deduct under section 617 expenditures paid or incurred after September 12, 1966.

(2) *Allocation in case of inadequate records.* If a taxpayer pays or incurs exploration expenditures during a taxable year beginning before September 13, 1966, and ending after September 12, 1966, but his records as to any mine or property are inadequate to permit a determination of the amount paid or incurred during the portion of the year ending after September 12, 1966, and the amount paid or incurred on or before such date, the exploration expenditures as to which the records are inadequate paid or incurred with respect to the mine or property during the taxable year shall be allocated to each part year (that is, the part occurring before September 13, 1966, and the part occurring after September 12, 1966) in the ratio which the number of days in such part year bears the number of days in the entire taxable year. For example, if the records of a calendar year taxpayer for 1966 are inadequate to permit a determination of the amount of exploration expenditures paid or incurred with respect to a certain mine or property after September 12, 1966, and the amount paid or incurred before September 13, 1966, $^{255}/_{365}$ of the total exploration expenditures paid or incurred by the taxpayer with respect to the mine or property during 1966 shall be allocated to the period beginning January 1, 1966, and ending September 12, 1966, and $^{110}/_{365}$ of the total exploration expenditures paid or incurred with respect to the mine or property during 1966 shall be allocated to the period beginning September 13, 1966, and ending December 31, 1966.

(3) *Partnership elections.* With respect to exploration expenditures paid or incurred by a partnership before September 13, 1966, the option to deduct under section 615(a) and the election to defer under section 615(b) shall be made by the partnership, rather than by the individual partners. All elections under sections 615(e), 617(a), or 617(b) as to the tax treatment of a partner's distributive share of exploration expenditures paid or incurred by any partnership of which he is a member shall be made by the individual partner, rather than by the partnership.

(b) *Effect of transfer of mineral property.* The binding effect of a taxpayer's election under section 615(e) shall not be affected by his receiving property with respect to which deductions have been allowed under section 617(a). The binding effect of a taxpayer's election under section 617(a) shall not be affected by his receiving property with respect to which deductions have been allowed under section 615 pursuant to an election made under section 615(e). However, see section 615(g)(2) for rules under which amounts deducted under section 615 by a transferor may be subject to recapture in the hands of a transferee who has made an election under section 617(a).

PART 15a—TEMPORARY INCOME TAX REGULATIONS UNDER THE INSTALLMENT SALES REVISION ACT

Sec.

AUTHORITY: 26 U.S.C. 453(i) and 7805.

§15a.453–0 Taxable years affected.

(a) *In general.* Except as otherwise provided, the provisions of §15a.453–1 (a) through (e) generally apply to installment method reporting for sales of real property and casual sales of personal property occurring after October 19, 1980. See 26 CFR §1.453–1 (rev. as of April 1, 1980) for the provisions relating to installment method reporting for sales of real property and casual sales before October 20, 1980 (except as provided in paragraph (b) of this section) and for provisions relating to installment sales by dealers in personal property occurring before October 20, 1980.

(b) *Certain limitations.* The provisions of prior law (section 453(b) of the Internal Revenue Code of 1954, in effect as of October 18, 1980) which required that the buyer receive no more than 30 percent of the selling price in the taxable year of the installment sale and that at least two payments be received shall not apply to reporting for casual installment sales of personal property and installment sales of real property occurring in a taxable year ending after October 19, 1980.

[T.D. 7768, 46 FR 10709, Feb. 4, 1981; 46 FR 43036, Aug. 26, 1981]

§15a.453–1 Installment method reporting for sales of real property and casual sales of personal property.

(a) *In general.* Unless the taxpayer otherwise elects in the manner prescribed in paragraph (d)(3) of this section, income from a sale of real property or a casual sale of personal property, where any payment is to be received in a taxable year after the year of sale, is to be reported on the installment method.

(b) *Installment sale defined*—(1) *In general.* The term ''installment sale'' means a disposition of property (except as provided in paragraph (b)(4) of this section) where at least one payment is to be received after the close of the taxable year in which the disposition occurs. The term ''installment sale'' includes dispositions from which payment is to be received in a lump sum in a taxable year subsequent to the year of sale. For purposes of this paragraph, the taxable year in which payments are to be received is to be determined without regard to section 453(e) (relating to related party sales), section (f)(3) (relating to the definition of a ''payment'') and section (g) (relating to sales of depreciable property to a spouse or 80-percent-owned entity).

(2) *Installment method defined*—(i) *In general.* Under the installment method, the amount of any payment which is income to the taxpayer is that portion of the installment payment received in